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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GS HOLISTIC, LLC,

No. 1:23-cv-00282-DJC-DB

Plaintiff,

v.

16 MR VAPE SMOKE SHOP d/b/a MR
17 VAPES SMOKE SHOP and
18 MUSTASEM YUSEF SARAMA,

Defendants,

**MOTION FOR DEFAULT FINAL
JUDGMENT AGAINST ALL DEFENDANTS**

Date: December 15, 2023

Time: 10:00 a.m.

Location: 501 I St., Courtroom 27, 8th Floor,
Sacramento, CA 95814

Date Filed: November 1, 2023

16 Pursuant to Federal Rule 55(b)(2), the Plaintiff, GS HOLISTIC, LLC, moves
17 this Court for entry of default judgment against the Defendants, MR VAPE SMOKE
18 SHOP d/b/a MR VAPES SMOKE SHOP and MUSTASEM YUSEF SARAMA, in
19 this action. The Defendants were served with the summons and Complaint but failed
20 to file an answer or otherwise defend in this lawsuit. The Plaintiff now requests that
21 this Court enter the attached proposed Default Judgment and Order for Other
22 Equitable Relief, and Civil Money Penalties (“Default Judgment”). The Default
23 Judgment award includes Statutory Damages of \$150,000, and Costs in the amount
24 of \$1,131.53 to be imposed against the Defendants.

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28 **I. PRELIMINARY STATEMENT**

1 As a result of Defendants' failure to appear in this action and the subsequent
2 entry of default against them, the material factual allegations set forth in the
3 Plaintiff's Complaint must be accepted as true. Those allegations establish all of the
4 necessary elements of the Plaintiff's claims for (i) willful trademark infringement of
5 the Stündenglass trademarks in violation of 15 U.S.C. §§ 1114; (ii) trademark
6 counterfeiting of the Stündenglass trademarks in violation of 15 U.S.C. §§ 1116(d);
7 and (iii) willful trademark infringement (false designation) in violation of 15 U.S.C.
8 § 1125(a).

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11 On the facts presented, it is also appropriate for the Court to grant the Plaintiff
12 all relief requested in this motion, namely:

13
14 a. Statutory damages for willful trademark counterfeiting pursuant to 15
15 U.S.C. § 1117(c) in the amount of \$150,000 (\$50,000 per mark); and
16 b. Costs in the amount of \$1,131.53.

17 In sum, the Plaintiff seeks an award of statutory damages for Defendants'
18 willful conduct, and an award of the Plaintiff's costs.

19
20 **II. STATEMENT OF FACT**

21 a. The "STÜNDENGLASS" Trademarks and Plaintiff's Business.

22
23 For approximately two years, the Plaintiff has worked to distinguish the
24 Stündenglass brand as the premier manufacturer of glass infusers by emphasizing
25 the brand's unwavering use of quality materials and focusing on scientific principles
26 which facilitate a superior smoking experience. Compl. ¶ 9. Stündenglass branded
27

1 products embody a painstaking attention to detail, which is evident in many facets
2 of authentic Stündenglass branded products. Compl. ¶ 9. It is precisely because of
3 the unyielding quest for quality and unsurpassed innovation that Stündenglass
4 branded products have a significant following and appreciation amongst consumers
5 in the United States and internationally. Compl. ¶ 9.
6
7

8 As a result of the continuous and extensive use of the trademark
9 “STÜNDENGLASS,” GS was granted both valid and subsisting federal statutory
10 and common law rights to the Stündenglass trademark. Compl. ¶ 10
11

12 The Plaintiff has used the Stündenglass Marks in commerce throughout the
13 United States, continuously, since 2020, in connection with the manufacturing of
14 glass infusers and accessories. Compl. ¶ 13.
15

16 The Stündenglass Marks are distinctive to both the consuming public and the
17 Plaintiff’s trade. GS’s Stündenglass branded products are made from superior
18 materials. The superiority of Stündenglass branded products is not only readily
19 apparent to consumers, but to industry professionals as well. Compl. ¶ 14.
20

21 The Stündenglass Trademarks are exclusive to GS and appear clearly on GS’s
22 Stündenglass Products, as well as on the packaging and advertisements related to the
23 products. Compl. ¶ 15. GS has expended substantial time, money, and other
24 resources in developing, advertising, and otherwise promoting and protecting these
25 Trademarks. Compl. ¶ 15. As a result, products bearing GS’s Stündenglass
26 Trademarks are widely recognized and exclusively associated by consumers, the
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1 public, and the trade as being high-quality products sourced from GS. Compl. ¶ 15.
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3 GS's Stündenglass Products have become some of the most popular of their
4 kind in the world and have also been the subject of extensive unsolicited publicity
5 resulting from their high-quality and innovative designs. Compl. ¶ 16. Because of
6 these and other factors, the GS brand, the Stündenglass brand, and GS's
7 Stündenglass Trademarks are famous throughout the United States. Compl. ¶ 16.
8

9 Since 2020, GS has worked to build significant goodwill in the Stündenglass
10 brand in the United States. GS has spent substantial time, money, and effort in
11 developing consumer recognition and awareness of the Stündenglass brand, via
12 point of purchase materials, displays, through their websites, attending industry trade
13 shows, and through social media promotion. Compl. ¶ 17.
14

15 In fact, Stündenglass Products have been praised and recognized by numerous
16 online publications, as well as publications directed to the general public. Compl. ¶
17
18.

19 At the time of this Complaint, the Plaintiff was the owner of federally
20 registered and common law trademarks. The following is a list of the Stündenglass
21 trademarks:
22

23 a. U.S. Trademark Registration Number 6,633,884 for the standard
24 character mark "Stündenglass" in association with goods further identified in
25 registration in international class 011.
26

27 b. U.S. Trademark Registration Number 6,174,292 for the design
28 plus words mark "S" and its logo in association with goods further identified

1 in the registration in international class 034.

2 c. U.S. Trademark Registration Number 6,174,291 for the standard
3 character mark “Stündenglass” in association with goods further identified in
4 registration in international class 034.

5 b. The Stündenglass marks are Counterfeiting Target.

6 GS sells its products under the Stündenglass Marks to authorized stores in the
7 United States, including in California. GS has approximately 3,000 authorized
8 stores in the United States selling its products. As such, Stündenglass branded
9 products reach a vast array of consumers throughout the country. Compl. ¶ 20.

10 It is because of the recognized quality and innovation associated with the
11 Stündenglass Marks that consumers are willing to pay higher prices for genuine
12 Stündenglass products. For example, a Stündenglass brand glass infuser is priced at
13 \$599.95, while a non-Stündenglass branded product is also being sold for up to \$600,
14 with a range of \$199 to \$600. Compl. ¶ 21.

15 Defendants’ Infringing Conduct and Failure to Litigate.

16 The Defendants have engaged in continuous and systematic business in
17 California and derive substantial revenue from commercial activities in California.
18 Specifically, the Defendants have engaged in the unlawful manufacture, retail sale,
19 and/or wholesale sales of counterfeit Stündenglass branded glass infusers and related
20 parts. Compl. ¶ 6.

21 The Defendants have sold goods with marks allegedly with Trademarks
22

1 registered to the Plaintiff. Compl. ¶ 25-26. The Defendants' acts constitute willful
2 trademark infringement. Compl. ¶ 43. The Defendants' infringing acts as alleged
3 herein have caused and are likely to cause confusion, mistake, and deception among
4 the relevant consuming public as to the source or origin of the Counterfeit Goods
5 sold by the Defendants. Compl. ¶ 42-43.

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7 The Defendants have failed to respond to the Complaint or otherwise appear
8 in this action.

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10 **III. LEGAL STANDARD**

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12 Federal Rule of Civil Procedure 55(b)(2) authorizes a court to enter a default
13 judgment against properly served Defendants who fail to file a timely responsive
14 pleading. By such a default, all of the Plaintiff's well-pled allegations in the
15 Complaint are deemed admitted. *See Assurance Co. of Am. v. MDF Framing, Inc.*,
16 2008 U.S. Dist. LEXIS 9865, at *7 (9th Cir. 2008). "A party's default conclusively
17 establishes that party's liability although it does not establish the amount of
18 damages" *Dillard v. Victoria M. Morton Enters.*, 2011 U.S. Dist. LEXIS 11134 at
19 *13 (9th Cir. 2011). In determining damages, an evidentiary hearing is not required,
20 instead, the Court may rely on the declarations submitted by the Plaintiff. *See Philip*
21 *Morris U.S.A. Inc. v. Castworld Prods.*, 219 F.R.D. 494 (9th Cir. 2003) at *498.
22 Factors that may be considered by the Court in exercising its discretion to enter
23 default judgment include the following "*Eitel*" factors:
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25

26
27 (1) the possibility of prejudice to the plaintiff, (2) the merits

1 of plaintiff's substantive claim, (3) the sufficiency of the
2 complaint, (4) the sum of money at stake in the action, (5)
3 the possibility of a dispute concerning material facts, (6)
4 whether the default was due to excusable neglect, and (7)
5 the strong policy underlying the Federal Rules of Civil
6 Procedure favoring decisions on the merits.

7 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (citation omitted).

8 IV. DISCUSSION

9 A. Jurisdiction and Service of Process

10 In considering whether to enter default judgment, a district court must first
11 determine whether it has jurisdiction over the subject matter and the parties to the
12 case. *See In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999). While evaluating the
13 existence of jurisdiction, the court may resolve factual disputes by “look[ing] beyond
14 the complaint” and considering “affidavits or other evidence properly brought before
15 the court.” *Savage v. Glendale Union High Sch., Dist. No. 205, Maricopa Cnty.*, 343
16 F.3d 1036, 1040, n.2 (9th Cir. 2003) (considering subject matter jurisdiction on a
17 12(b)(1) motion).

20 1. Subject Matter Jurisdiction

21 This is a civil action against the Defendants for trademark infringement,
22 counterfeiting, and false designation of origin and unfair competition, under the
23 Lanham Act (15 U.S.C. § 1051 et. seq.). This Court has subject matter jurisdiction
24 over the claims in this action that relate to trademark infringement, counterfeiting,
25 and false designation of origin and unfair competition pursuant to the provisions of
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1 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a).
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3 **2. Personal Jurisdiction**

4 **a. Basis for Personal Jurisdiction**

5 This Court has personal jurisdiction over the Defendants as the Defendant,
6 MR VAPE SMOKE SHOP d/b/a MR VAPES SMOKE SHOP and MUSTASEM
7 YUSEF SARAMA, is incorporated in and has its principal place of business in
8 California. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846
9 (2011); *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). The Defendant,
10 MUSTASEM YUSEF SARAMA, resides in California. The Defendants regularly
11 conduct and solicit business in the State of California (including in this Judicial
12 District). *Milliken v. Meyer*, 311 U.S. 457, 462-63 (1940); *Williams v. State of North*
13 *Carolina*, 325 U.S. 226, 229 (1945).

14 **b. Service of Process**

15 The Defendant, MR VAPE SMOKE SHOP d/b/a MR VAPES SMOKE SHOP
16 was served with Complaint on March 2, 2023, via substitute service. [DE 4]. *See*
17 Federal Rule of Civil Procedure 4(e)(2)(A).

18 The Defendant, MR VAPE SMOKE SHOP, was served with Complaint on
19 July 3, 2023, via service upon the registered agent, MUSTASEM YUSEF SARAMA
20 [DE 15]. *See* Federal Rule of Civil Procedure 4(h)(1)(B).

21 Therefore, service of process upon the Defendants is adequate for Default.
22

B. Eitel Factors

1. Possibility of Prejudice to the Plaintiff

The Plaintiff will suffer prejudice if this Court does not enter default judgment. Because the Defendants have not appeared in this action, default judgment is the only way in which Plaintiff may obtain relief for the infringement.

See Colony Ins. Co. v. Schmid, 2020 U.S. Dist. LEXIS 164505, *5 (C.D. Cal. Sep. 9, 2020). Without the entry of default judgment, the Defendants will have escaped liability simply by not showing up. *See Vogel v. Rite Aid Corp.*, 992 F. Supp. 2d 998, 1007 (C.D. Cal. 2014). Therefore, this factor favors entry of default judgment.

2. Merits of the Plaintiff's Claims and Sufficiency of the Complaint

Together, the second and third Eitel factors test the allegations in the Plaintiff's Complaint and whether they state a claim on which the Plaintiff may recover. *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F.Supp. 2d 1172, 1175 (C.D. Cal. 2002). In evaluating these factors, the well-pleaded allegations of the complaint are taken as admitted. *Benny v. Pipes*, 799 F.2d 489, 495 (9th Cir. 1986).

a. Plaintiff's Complaint Establishes Defendants Liability for Trademark Infringement and False Designation of Origin

Plaintiff's motion for default judgment focuses on two claims: trademark counterfeiting and infringement, and false designation of origin and unfair competition. To state a claim for trademark infringement or false designation of origin, Plaintiffs must establish that they own a "valid, protectable mark" and that

1 Defendants are using a "confusingly similar mark." *See Grocery Outlet, Inc. v.*
2 *Albertson's, Inc.*, 497 F.3d 949, 951 (9th Cir. 2007) (per curiam) (citing 15 USC. §
3 1114(1)); *see also Brookfield Commc'ns, Inc. v. W Coast Entm't Corp.*, 174 F.3d
4 1036, 1046 (9th Cir. 1999); *AK Futures LLC v. Smoke Tokes, LLC*, 2021 PVL
5 5359019, at *3 (C.D. Cal. Nov. 17, 2021) (false designation of origin claim analyzed
6 using same elements as trademark infringement claim). A Plaintiff must show: (1) it
7 has a protected ownership interest in the mark; and (2) the alleged infringer's use of
8 the mark "is likely to cause confusion, or to cause mistake, or to deceive." *Reno Air*
9 *Racing Ass'n v. McCord*, 452 F.3d 1126, 1134 (9th Cir. 2006) (internal quotation
10 marks and citation omitted); 15 U.S.C. § 1114. The allegations in Plaintiff's
11 complaint—which are taken as true—are sufficient to establish that both claims are
12 meritorious.

13 First, the Plaintiff is the owner of three Stündenglass Trademarks. Compl. ¶¶
14 11-12. Stündenglass Marks are registered with the USPTO. [Trademark registration
15 certificate is attached and marked as Exhibit A.] This uncontested proof of
16 registration conclusively establishes Plaintiff's protected ownership interest. *See*
17 *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1124 (9th Cir. 2014).

18 The Court in *136 Collins Ave. v. V.*, 2006 U.S. Dist. LEXIS 113130 at *6 (9th
19 Cir. 2006) refers to the eight factor test first established by the Ninth Circuit Court
20 in *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-49 (9th Cir. 1979) (abrogated in
21 part on other grounds by *Mattel, Inc. v. Walking Mountain Prod.*, 353 F.3d 792 (9th
22 Cir. 2003)). The factors are:

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1 Cir. 2003)) to determine whether a “likelihood of confusion” exists between the
2 parties allegedly related services. The eight-factor test includes: strength of the mark;
3 relatedness of the goods or services; similarity of the marks; evidence of actual
4 confusion; marketing channels used; the degree of care likely to be exercised by the
5 purchaser; defendant's intent in selecting the mark; and likelihood of expansion into
6 other markets.

7 Plaintiff has shown that the Defendants' use is likely to cause customer
8 confusion. In counterfeiting cases, the Court assumes a likelihood of confusion when
9 the offending mark is counterfeit or virtually identical to a protected mark and is
10 used on an identical product or service. *See Louis Vuitton Malletier, S.A. v. Akanoc*
11 *Sols., Inc.*, 658 F.3d 936, 945 (9th Cir. 2011); *Brookfield*, 174 F.3d at 1056 ("In light
12 of the virtual identity of marks, if they were used with identical products or services
13 likelihood of confusion would follow as a matter of course."). Here, Plaintiff alleges
14 that Defendants sold goods that bore the Marks, without Plaintiffs consent. Compl.
15 at ¶ 25-27. Specifically, on October 18, 2022, Defendants offered for sale a glass
16 infuser with Stündenglass Marks affixed to it. *Id.* at ¶ 29-30. And an investigator for
17 the Plaintiff purchased this item and upon inspection, Plaintiff determined that the
18 product was a counterfeit good. *Id.* at ¶ 30-31. Plaintiff further alleges that
19 Defendants' infringement was willful. *Id.* at ¶ 43. These allegations, if true, are
20 sufficient to demonstrate a likelihood of confusion. Accordingly, the second and
21 third *Eitel* factors weigh in favor of granting the motion for default judgment.

1 3. The Sum of Money at Stake

2 "Default judgments are disfavored where the sum of money requested is too
3 large or unreasonable in relation to a defendant's conduct." *Constr. Laborers Trust*
4 *Funds for S. Cal. Admin. Co. v. Anzalone Masonry, Inc.*, 316 F. Supp. 3d 11 92,
5 1201 (C.D. Cal. 2018). Here, though damages are discussed further below, the
6 Plaintiff requests damages based on the amount permitted by statute and as described
7 in its Complaint. The amount requested is not unreasonable in light of the
8 circumstances. Therefore, this factor weighs in favor of granting default judgment.
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11 4. The Possibility of Dispute Concerning Material Facts

12 This factor also favors entry of default judgment. After entry of default, "all
13 well-pleaded facts in the complaint are taken as true, except those relating to
14 damages." *Pepsico, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 11 72, 11 76 (C.D. Cal.
15 2002). Because the Defendants has not made any appearance in this case to contest
16 any of the issues or assert any defenses, it is very unlikely that disputes as to material
17 fact will arise. *See e.g.*, *Colony Ins. Co.*, 2020 U.S. Dist. LEXIS at * 11. Therefore,
18 this factor also weighs in favor of entry of default judgment.
19
20

21 5. Whether Defendants' Default was the Product of Excusable Neglect

22 This factor favors the entry of default judgment where the Plaintiff
23 demonstrates that the Defendants have been properly served and is thus aware of the
24 pending action. *See Wecosign, Inc. v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072,
25 1082 (C.D. Cal. 2012). Here, the Plaintiff has properly shown that the Defendants
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1 were properly served [DE 4, 15].
2

3 6. Public Policy Favoring Decisions on the Merits
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5 The final Eifel factor advises that "[c]ases should be decided upon their merits
6 whenever reasonably possible." 728 F.2d at 1472. However, "termination of a case
7 before hearing the merits is allowed whenever a defendant fails to defend an action."
8 *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177. Thus, this preference is not dispositive of
9 entering default judgment when the other Eifel factors favor such, as is the case here.
10

11 See *Id.*

12 As such, the factors set forth in *Eitel* weigh in favor of entering default
13 judgment, and this Court should grant this motion and enter a default judgment
14 against the Defendants.
15

16 **C. Relief Sought**

17 **1. Plaintiff is Entitled to Statutory Damages**

18 The Defendants' acts constitute willful trademark infringement in violation of
19 Section 32 of the Lanham Act, 15 U.S.C. § 1114. Moreover, it constitutes a false
20 designation of origin which is likely to cause confusion and mistake as it will deceive
21 consumers as to the source or origin of such goods or sponsorship or approval of
22 such goods by the Plaintiff. As a result, the elements described by the court have
23 been satisfied and statutory damages must be awarded.
24

25 The Lanham Act, 15 U.S.C. § 1117(c), provides, in pertinent part:
26

27 In a case involving the use of a counterfeit mark (as
28

1 defined in section 1116(d) of this title) in connection with
2 the sale, offering for sale, or distribution of goods or
3 services, the plaintiff may elect, at any time before final
4 judgment is rendered by the trial court, to recover, instead
5 of actual damages and profits under subsection (a) of this
6 section, an award of statutory damages for any such use in
7 connection with the sale, offering for sale, or distribution
8 of goods or services in the amount of —(1) not less than
9 \$1,000 or more than \$200,000 per counterfeit mark per
10 type of goods or services sold, offered for sale, or
11 distributed, as the court considers just; or(2) if the court
12 finds that the use of the counterfeit mark was willful, not
13 more than \$2,000,000 per counterfeit mark per type of
14 goods or services sold, offered for sale, or distributed, as
15 the court considers just. (Emphasis added)

16 “A plaintiff who proves a violation of a registered trademark is entitled to recover
17 its profits and any damages sustained. 15 U.S.C. § 1117(a). According to 15 U.S.C.
18 § 1117(b), “in a case involving use of a counterfeit mark . . . the court shall, unless
19 the court finds extenuating circumstances, enter judgment for three times such
20 profits or damages, whichever amount is greater. . . .” See *Mophie, Inc. v. Shah*,
21 2015 U.S. Dist. LEXIS 186868 (C.D. Cal. Feb. 9, 2015). Because the Defendants
22 have refused to cooperate, as indicated through the failure to obtain counsel, and
23 continue the litigation, it is not possible for the Plaintiff to obtain discovery to
24 establish exact damages with certainty establish exact damages with certainty. While
25 the Defendants probably have not sold millions of counterfeit products, it has
26 engaged in the purchase and sale of counterfeits of at least one unit, and likely traded
27 in more. In fact, at the time GS’s investigator purchased the counterfeit product at
28 Defendant’s store, GS’s investigator witnessed that the Defendants had placed for

1 sale on their shelf two other Studenglass bearing the Plaintiff's design and word
2 Marks, besides the Studenglass sold to the investigator.
3

4 While actual damages to the Plaintiff may not be calculated with exact
5 certainty, an assessment of damages has been completed by Plaintiff, GS
6 HOLISTIC, LLC. *See* Folkerts Aff. As to Value of Damages; *see also* Folkerts Aff.
7 as to Damages. GS HOLISTIC, LLC Owner, Chris Folkerts, states that the Plaintiff
8 is seeking only a fraction of the actual losses to its business and that damages of
9 \$150,000.00 are reasonable since the actual damages to the business are far in excess
10 of this amount. Folkerts Aff. as to Value of Damages ¶¶ 8,9, 15.
11

12 The Plaintiff have alleged that Defendants willfully infringed Plaintiffs mark.
13 Compl. at ¶ 43. *See. Yelp Inc. v. Carroll*, 70 F. Supp. 3d 1082, 1101 (N.D. Cal. 2014)
14 ("An allegation of willful trademark infringement is deemed true on default."). *See*
15 *also. LG Corp. v. Huang Xiaowen*, No. 16-CV-1162 JLS (NLS), 2017 U.S. Dist.
16 LEXIS 16611, at *19 (S.D. Cal. 2017) ("because default was entered against
17 Defaulting Defendants, Plaintiffs' allegations that Defaulting Defendants were
18 willful infringers of Plaintiffs' marks is taken as true."). Moreover, the Defendants
19 have not cooperated in providing information from which the financial benefit of
20 infringement can be calculated, since they have not appeared. If the Court were to
21 award Plaintiff only minimal damages that would appear to send the message to
22 infringers ignoring a lawsuit is a good strategy. Meanwhile, granting of the requested
23 statutory damage award at this time will act to deter both this Defendant, and others,
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1 from violating the Plaintiff's trademarks and otherwise violating the Plaintiff's
2 rights with relative impunity. *Adobe Sys. v. Kern*, No. C 09-1076 CW (JL), 2009
3 U.S. Dist. LEXIS 123566, at *24-25 (N.D. Cal. 2009).

5 Further, in *Weaver v. Burger King Corp. (In re Weaver)*, 219 B.R. 890 (9th
6 Cir. 1998), the Court states, "the case law of this Circuit makes clear that courts are
7 vested with considerable equitable discretion in determining measure of damages
8 for trademark infringement." *See Columbia Pictures Indus. Inc. v. Krypton Broad.
9 of Birmingham*, 259 F.3d 1186, 1194 (9th Cir. 2001) ("The court has wide discretion
10 in determining the amount of statutory damages to be awarded, constrained only by
11 the specified maxima and minima.")

14 Based on the discretion this Court is given in Lanham Act cases such as this,
15 the damages assessment of GS HOLISTIC, LLC, an award of \$150,000.00 (\$50,000
16 per Mark) is the appropriate amount of statutory damages that is well within the
17 discretion of the Court to award. This amount not only reflects actual damages
18 suffered by the Plaintiff, but also sends an unequivocal message to the industry that
19 counterfeiting will not be tolerated, nor will misrepresentations or otherwise
20 refusing to cooperate with discovery demands (even if informally presented). Here,
21 the Defendants have willfully infringed on three of the Plaintiff's trademarks with
22 the Registration Numbers 6,633,884, 6,174,292 and 6,174,291, justifying
23 \$150,000.00 in statutory damages.
24

25 **2. Plaintiff is Entitled to Cost of the Litigation**

1 Pursuant to 15 U.S.C. § 1117, the Plaintiff is entitled to recover the costs of the
2 action. *See* 15 U.S.C. § 1117. The Plaintiff incurred costs in the total amount of
3 \$1,131.53, consisting of the filing fee (\$402.00), the process server fee (\$260.00),
4 and the Plaintiff's investigation fees (\$469.53). *See* Aff. Supp. Final Default J. ¶ 6.

5 **3. Plaintiff is Entitled to Injunctive Relief**

6 By the reasons explained in Plaintiff's Complaint and pursuant to 15 U.S.C. §
7 1116, the Plaintiff is entitled to injunctive relief. The Plaintiff requests that this Court
8 enter an order which permanently enjoins MR VAPE SMOKE SHOP, and their
9 agents, employees, officers, directors, owners, representatives, successor companies,
10 related companies, and all persons acting in concert or participation with it from:
11

12 (a) Import, export, making, manufacture, reproduction, assembly, use,
13 acquisition, purchase, offer, sale, transfer, brokerage, consignment,
14 distribution, storage, shipment, licensing, development, display, delivery,
15 marketing advertising or promotion of the counterfeit Stündenglass product
16 identified in the complaint and any other unauthorized Stündenglass product,
17 counterfeit, copy or colorful imitation thereof.

18 (b) Assisting, aiding or attempting to assist or aid any other person or entity in
19 performing any of the prohibited activities referred to in Paragraphs (a) above.

20 **4. Plaintiff is Entitled to Destruction of Infringing Products**

21 Pursuant to 15 U.S.C. §1118, the Plaintiff requests that this Court grant
22 an order requiring the Defendants, at their cost, deliver to the Plaintiff for destruction

1 all products, accessories, labels, signs, prints, packages, wrappers, receptacles,
2 advertisements, and other material in their possession, custody or control bearing any
3 of the Stündenglass Marks.
4

5 **V. CONCLUSION**

6 For the foregoing reasons, this Court should grant Plaintiffs' motion in its
7 entirety.
8

9
10 **CERTIFICATE OF SERVICE**

11 I HEREBY CERTIFY that on October 31, 2023, the foregoing document was
12 electronically filed with the Clerk of the Court using CM/ECF to serve on all counsel
13 of record.
14

15
16
17 */s/ Tomas Carlos Leon.*
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